

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5217 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

KADERBHAI J KURESHI

Versus

COMMISSIONER OF POLICE

Appearance:

MS.BANNA DATTA FOR MR ANIL S DAVE for Petitioner
MR.NEEGAM SHUKLA,AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against an order dated 6.6.1996 passed by the Police Commissioner, Ahmedabad City whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 6.6.1996 and since then the petitioner is under detention lodged at Jamnagar Jail, Jamnagar.

This Special Civil Application was filed on 18.7.1996 and on 19.7.1996 Rule returnable on 23.8.1996 was issued. So far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed.

The grounds of detention enclosed with the detention order show that there were two criminal cases registered against the petitioner under the Prohibition Act. Besides this the Detaining Authority has taken into consideration the statements made by four witnesses against the petitioner's antisocial activities.

The detention order has been challenged on more than one grounds. But the learned counsel for the petitioner has stressed that no case of breach of public order is made out against the petitioner. In view of the reasons given in the judgment dated 4.10.1996 in Special Civil Application No. 3879 of 1996 it is clear that the allegation and material relied upon by the Detaining Authority do not constitute a case of breach of public order. It can at the most be said that it is a breach of law and order. The detention order therefore cannot be sustained in the eye of law. The detention order therefore deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned order of detention dated 6.6.1996 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner forthwith if not required in any other case. Rule is made absolute.
